

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201510060	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/25/2015 1:15 PM	Location of Incident: Bronx River Avenue and Story Avenue; 43rd Precinct stationhouse.	Precinct: 43	18 Mo. SOL 5/25/2017	EO SOL 5/25/2017	
Date/Time CV Reported Thu, 11/26/2015 1:28 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 11/26/2015 1:27 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Aida Demarinis	22442	945672	043 PCT
2. Officers			Unknown
3. POM Thomas Perez	29432	946109	043 PCT
4. DT3 Hugh Mchugh	04402	920585	043 DET
5. SGT Mario Moreno	05166	936054	043 PCT
6. POM Fernando Gonzalez	17299	940202	043 DET
7. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Bashiek Collins	03211	917064	043 PCT
2. POM Yvesmarc Elie	16218	917076	043 PCT
3. POF Jessica Thomas	22961	933407	043 PCT
4. POM Jose Rosario	11466	945301	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mario Moreno	Abuse: Sergeant Mario Moreno stopped § 87(2)(b)	
B.SGT Mario Moreno	Abuse: Sergeant Mario Moreno stopped § 87(2)(b)	
C.SGT Mario Moreno	Abuse: Sergeant Mario Moreno stopped § 87(2)(b)	
D.SGT Mario Moreno	Abuse: Sergeant Mario Moreno stopped an individual.	
E.POM Thomas Perez	Abuse: Police Officer Thomas Perez frisked § 87(2)(b)	
F.POM Thomas Perez	Abuse: Police Officer Thomas Perez searched § 87(2)(b)	
G. Officers	Force: Officers used physical force against § 87(2)(b)	
H. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.DT3 Hugh Mchugh	Abuse: Detective Hugh McHugh frisked § 87(2)(b)	
J.DT3 Hugh Mchugh	Abuse: Detective Hugh Mchugh searched § 87(2)(b)	
K.POM Fernando Gonzalez	Abuse: Police Officer Fernando Gonzalez frisked § 87(2)(b)	
L.POM Fernando Gonzalez	Abuse: Police Officer Fernando Gonzalez frisked an individual.	
M.POM Fernando Gonzalez	Abuse: Police Officer Fernando Gonzalez searched § 87(2)(b)	
N.POM Fernando Gonzalez	Abuse: Police Officer Fernando Gonzalez searched an individual.	
O.POF Aida Demarinis	Abuse: Police Officer Aida Demarinis interfered with § 87(2)(b)'s use of a recording device.	
§ 87(2)(g), § 87(4-b)		

### Case Summary

§ 87(2)(b) filed this complaint on November 26, 2015, with the CCRB via the online website. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

On November 25, 2015, at approximately 1:20pm, in the vicinity of Bronx River Avenue and Story Avenue in the Bronx, § 87(2)(b) and an unidentified male individual, were riding a New York City Metropolitan Transit Authority bus. Sgt. Mario Moreno of the 43<sup>rd</sup> Precinct stopped all four individuals (**Allegations A-D**).

During the stop, PO Thomas Perez of the 43<sup>rd</sup> Precinct allegedly frisked § 87(2)(b) and searched his pockets (**Allegation E and F**). A group of officers allegedly brought § 87(2)(b) to the ground forcefully (**Allegation G**). As they did so, an unidentified officer allegedly told § 87(2)(b) to “Get the fuck on the ground!” (**Allegation H**).

Det. Hugh McHugh of the 43<sup>rd</sup> Precinct Detective Squad frisked § 87(2)(b) and allegedly searched his pockets (**Allegation I and J**). PO Gonzalez allegedly frisked § 87(2)(b) and the fourth unidentified male on scene (**Allegation K and L**). PO Gonzalez also allegedly searched § 87(2)(b) and the fourth unidentified male on scene (**Allegation M and N**). After a negative show-up conducted with the victims of a robbery, § 87(2)(b) and the fourth individual were released from the scene without being summonsed.

PO Aida Demarinis of the 43<sup>rd</sup> Precinct interacted with § 87(2)(b) who was a passenger on the stopped BX5 bus. PO Demarinis allegedly told § 87(2)(b) that she could not record the incident and/or that she needed to stop doing so (**Allegation O**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) captured this incident on her cell phone’s video camera. The full video may be found in Board Review 18 and it is transcribed in full in Board Review 19.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate her complaint during her sworn statement on December 14, 2015, § 87(2)(b).
  - A FOIL request was filed on March 14, 2016, to determine whether any notices of claim were filed in regard to this incident. The results will be added to the case file upon receipt.
  - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[redacted]  
[redacted]
- [redacted]  
[redacted]  
[redacted]  
[redacted]

### Civilian and Officer CCRB Histories

- This is [§ 87(2)(b)] and [§ 87(2)(b)]'s first CCRB complaint (BR 2).
- [§ 87(2)(b)] was listed as a witness in one prior case, [§ 87(2)(b)]  
[redacted]
- PO Demarinis has had 22 previous CCRB allegations pled against her, involving 9 cases, during her 8-year tenure with the NYPD. Five allegations of these allegations were substantiated and the Board recommended Charges for all five. In case number 200812925, the NYPD recommended Command Discipline B for the two substantiated allegations; in case number 201110612, the NYPD declined disciplinary action for the three substantiated allegations. Four out of five of these substantiated allegations, as well as 11 out of the 22 total allegations pled against her, were Abuse of Authority allegations, [§ 87(2)(g)]  
[redacted]
- PO Perez has been the subject of four previous CCRB allegations, involving two previous cases, during his 8-year tenure with the NYPD. None of the allegations were substantiated [§ 87(2)(g)]  
[redacted].
- Det. Hugh McHugh has been the subject of three previous CCRB allegations during his 18-year tenure with the NYPD, involving two cases. No allegations were substantiated, [§ 87(2)(g)]  
[redacted].
- Sgt. Moreno has been the subject of four previous CCRB allegations involving three cases during his 11-year tenure with the NYPD, none of which were substantiated. [§ 87(2)(g)]  
[redacted]
- This is PO Gonzalez's first CCRB complaint during his ten-year tenure with the NYPD.

### Potential Issues

Four males were stopped during this incident: [§ 87(2)(b)]  
[redacted] and a fourth male who could not be identified. [§ 87(2)(b)] provided a sworn statement, and while [§ 87(2)(b)] provided an unverified telephone statement, he refused to sign a verification form on the grounds that he did not wish to be further involved in the investigation. Contact with [§ 87(2)(b)] was never successfully made, and the fourth male was never identified because the other individuals did not know his name and the teachers who witnessed the incident stated that this fourth individual was not a student at their school. [§ 87(2)(g)]  
[redacted]  
[redacted]  
[redacted]

### Findings and Recommendations

### **Allegations Not Pled**

- Abuse of Authority – Stop: PO Gonzalez acknowledged pointing at two of the male passengers seated in the back of the bus and gesturing for them to disembark, and three civilians reported that PO Gonzalez gestured to three seated passengers plus § 87(2)(b) (who was standing at the time). However, Sgt. Moreno, who was actually aboard the bus and having verbal interactions with passengers at the time, acknowledged being the officer to verbally instruct each of the four passengers to exit the bus. After exiting, all four passengers were detained and subjected to frisks and allegedly searches while awaiting a show-up. In short, although PO Gonzalez testified to instructing some of the passengers to exit from the bus, Sgt. Moreno was the officer to pull over the bus, the supervisor on scene, and the first and primary officer interacting with the bus passengers. § 87(2)(g)
- Force – Physical Force: § 87(2)(b) reported observing some object or extremity (which she could not describe) moving toward § 87(2)(b)'s midsection as the officer struggled with him next to the bus. She also stated that § 87(2)(b)'s body jerked backward, seemingly in response. Although she called her observation a punch during her initial statement to the CCRB, she affirmed that she did not actually observe a punch. § 87(2)(b) did not allege a punch or any force used against his mid-section or stomach area. No other civilians reported seeing an officer punch or strike § 87(2)(b) in the stomach, or elsewhere on his body. § 87(2)(g)

### **Allegation A –Abuse of Authority – Sergeant Mario Moreno stopped § 87(2)(b)**

It is undisputed that § 87(2)(b) and a fourth unidentified male were instructed by police officers to exit the BX5 MTA bus after Sgt. Moreno pulled the bus over as part of a robbery investigation. § 87(2)(g)

Sgt. Moreno acknowledged pointing at and verbally instructing § 87(2)(b) and a fourth individual to exit the bus (BR 12). As shown in the video footage filmed by § 87(2)(b) these four young men did exit from the bus and were detained by the police (BR 18, BR 19).

§ 87(2)(b) alleged the following: once the bus had been stopped he noticed two officers standing outside of the bus's side doors (identified as PO Gonzalez and Det. McHugh), prompting § 87(2)(b) to stand up from his seat in attempt to see what the officers were looking for. When other officers, determined to be Sgt. Moreno and PO Rosario, entered the bus through the front doors, § 87(2)(b) testified that he walked from the back of the bus toward the front and reached Sgt. Moreno, who then escorted him off of the bus by his arm through the side doors (BR 5).

§ 87(2)(b) testified to observing § 87(2)(b) stand up when the officers boarded the bus and stated that she heard one of the passengers who was ultimately stopped – but was unsure which – ask the officers why they were being blamed for the robbery (BR 4).

Sgt. Moreno testified that, after entering the bus from the front, he made a general announcement to the passengers informing them of the police investigation. § 87(2)(b) rose from his seat and began cursing and approaching him. Although Sgt. Moreno had not said anything to § 87(2)(b) as of yet, § 87(2)(b) caught Sgt. Moreno's attention by making statements such as, "I didn't do anything!" and by getting within one-foot's distance of Sgt. Moreno. At this time, Sgt. Moreno placed his hand at chest-level and pushed § 87(2)(b) back slightly, telling him to back up and instructing him to exit the bus. Sgt. Moreno also pointed to three other individuals at this time who were still seated at the rear of the bus and instructed them to exit. He testified that he stopped these three others on the basis of the description contained in the radio call (BR 12).

PO Gonzalez corroborated Sgt. Moreno's testimony that § 87(2)(b) stood up and approached Sgt. Moreno, getting close to his person. PO Rosario, who was on the bus with Sgt. Moreno, stated that § 87(2)(b) pushed officers on the bus. The other officers on scene at this time were unable to speak to § 87(2)(b)'s specific demeanor (BR 13, BR 17, BR 9, BR 11).

Officers may stop an individual whom they have reasonable suspicion to believe has engaged in, is engaging in, or is about to engage in a crime. People v. DeBour, 40 N.Y.2d 210 (1976)(BR 20).

§ 87(2)(g)



**Allegation B – Abuse of Authority - Sergeant Mario Moreno stopped** § 87(2)(b)

**Allegation C – Abuse of Authority – Sergeant Mario Moreno stopped** § 87(2)(b)

**Allegation D – Abuse of Authority – Sergeant Mario Moreno stopped** § 87(2)(b)

Sgt. Moreno boarded the bus and, after § 87(2)(b) rose from his seat and confronted him in an agitated manner, Sgt. Moreno instructed § 87(2)(b) as well as § 87(2)(b) and a fourth passenger to exit the bus. § 87(2)(b) and the fourth passenger remained quiet and in their seats prior to Sgt. Moreno directing them off of the bus.

According to NYPD Event Summary § 87(2)(b) the robbery victim described the perpetrators as four black males with masks on their faces, one of whom was wearing a hoodie and one of whom had a cane. The victim further reported that she followed the perpetrators on foot and observed them board a Hunts Point-bound bus on Story Avenue (BR 3).



**Allegation E – Abuse of Authority – Police Officer Thomas Perez frisked** § 87(2)(b)

**Allegation F– Abuse of Authority – Police Officer Thomas Perez searched** § 87(2)(b)

§ 87(2)(b) alleged that, after exiting the bus, two officers whom he could not identify frisked his upper body, thighs, and ankle areas. He reported that, after feeling an object which § 87(2)(b) believed was a pen, these officers then entered both of his front pant pockets (BR 5).

No other civilians observed this frisk or search occur.

PO Perez denied frisking § 87(2)(b) at this point in the incident; he instead acknowledged frisking § 87(2)(b) for weapons after he was already handcuffed, and prior to transport to the stationhouse. Sgt. Moreno was the only officer who testified to observing a frisk at the point in time which § 87(2)(b) alleged it occurred, and Sgt. Moreno stated that it was PO Perez who performed the frisk immediately after § 87(2)(b) exited from the bus. Sgt. Moreno stated that PO Perez did not search § 87(2)(b)'s pockets and no objects were discovered during the frisk (BR 10, BR 12).

The video captured by § 87(2)(b) begins after the officers are already struggling with § 87(2)(b) against the bus, and therefore does not include the moment in time during which the alleged frisk occurred.

A frisk requires reasonable suspicion that an individual is armed. People v. DeBour, 40 N.Y.2d 210 (1976)(BR 20).

§ 87(2)(g)

§ 87(2)(b)

**Allegation G – Force – Officers used physical force against** § 87(2)(b)

§ 87(2)(b) alleged that approximately eight officers forced him to the ground after handcuffing him. He reported landing face-down on the street, where officers restrained his legs and one officer placed a knee against his lower back. His breathing was not restricted from this pressure, though he stated that being face-down on the ground while having a cold did cause some breathing difficulty. While on the ground, § 87(2)(b) testified that he was barely, if at all, moving his body and that he only rotated his head. During the incident, he sustained small lacerations to the tops of his two hands from the handcuffs, which he noticed while in the holding



cell and was uncertain at what precise point they were sustained (see photograph taken at the CCRB of these lacerations in BR 28). § 87(2)(b) did not seek any medical treatment for the lacerations (BR 5).

§ 87(2)(b) testified that the officers took § 87(2)(b) to the ground by applying pressure to his shoulders. She observed an officer, whom she could not describe, placed his knee on § 87(2)(b)'s lower back for the remainder of his time on the ground. Another officer pressed down on § 87(2)(b)'s legs and another officer restrained his arms. He was handcuffed in this position after less than one minute, during which time § 87(2)(b) moved his shoulders and his head but not his legs (BR 4). § 87(2)(b) arrived on scene once § 87(2)(b) was already on the ground. She corroborated § 87(2)(b)'s account of officers' restraint and § 87(2)(b)'s movements while on the ground. Neither § 87(2)(b) nor § 87(2)(b) observed any injuries on § 87(2)(b)'s person (BR 8).



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The video footage captures parts of § 87(2)(b)'s apprehension, showing officers struggling with § 87(2)(b) against the bus. The bus obscures much of the apprehension itself, but the footage does capture § 87(2)(b) being taken to the ground (while he is *not* handcuffed) and officers positioned above him, their bodies obscuring § 87(2)(b)'s. Thirty-five seconds after § 87(2)(b) goes to the ground, the officers standing slightly away from the struggle hand the struggling officers a set of handcuffs. The camera captures other parts of the scene until 1:47, when § 87(2)(b) is shown chest-down on the ground with two officers restraining him and two officers standing nearby. One officer has his right knee on the back of § 87(2)(b)'s left thigh, and another officer is crouching behind him and his knees, nor their placement relative to § 87(2)(b)'s body, are visible.

All of the officers, both those directly involved in his apprehension and those who had other roles on scene, testified to § 87(2)(b)'s uncooperativeness throughout the incident. PO Perez, Det. McHugh, and Sgt. Moreno, each testified that § 87(2)(b) attempted to leave the scene prior to the show-up, such that he had to be placed in handcuffs. In addition, PO Demarinis, PO Perez, PO Rosario testified that § 87(2)(b) pushed the officers and/or flailed his arms in an attempt to create distance between himself and the officers, necessitating their taking him to the ground. All of the officers noted that § 87(2)(b) physically resisting being handcuffed by moving his arms and legs and refusing to give the officers his hands (BR 9-17).

§ 87(2)(b)'s physical resistance, to which the officers consistently attested, is echoed by a bystander exchange which is caught at 1:25 seconds on the video; § 87(2)(b) asks, "Why they have him on the ground?" to which a second unidentified passenger replies, "Because he resisted like a stupid-ass" (BR 18, BR 19). Although no witnesses observed the exchange that immediately precipitated § 87(2)(b) being taken to the ground, both § 87(2)(b) and § 87(2)(b) stated that they observed § 87(2)(b) making physical movements while on the ground. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Officers are to use the minimum force necessary to overcome resistance to effect an arrest. NYPD Patrol Guide Procedure 203-11\_(BR 37).

§ 87(2)(g)

**Allegation H – Discourtesy- An officer spoke discourteously toward § 87(2)(b)**

§ 87(2)(b) alleged that an officer told him to “Get the fuck down!” as the officers attempted to get § 87(2)(b) to the ground. He did not know which of the officers surrounding him made this statement (BR 5).

No other civilians reported hearing this, or any, profanity used by the officers. None of the officers acknowledged having told § 87(2)(b) to “Get the fuck down,” nor hearing another officer do so (BR 4, BR 6-8, BR 9-17).

The video footage does not capture any conversation occurring between the officers and § 87(2)(b) as § 87(2)(b) was filming the incident from her position inside of the bus at this time.

§ 87(2)(g)

**Allegation I – Abuse of Authority – Detective Hugh McHugh frisked § 87(2)(b)**

**Allegation J – Abuse of Authority – Detective Hugh McHugh searched § 87(2)(b)**

It is undisputed that Det. McHugh frisked § 87(2)(b) as § 87(2)(b) alleged the frisk and Det. McHugh acknowledged it as well as reflected the frisk in a Stop, Question, and Frisk Report that he generated. § 87(2)(g)

In an unverified telephone statement, § 87(2)(b) alleged that Det. McHugh frisked § 87(2)(b)'s waist, legs, and the outside of his jacket while he stood with his hands against the wall at the edge of the sidewalk. § 87(2)(b) had an asthma inhaler inside his windbreaker pocket, which Det. McHugh entered and examined the inhaler with his hand but did not remove it (BR 6).

§ 87(2)(b) observed § 87(2)(b) standing facing the wall with his legs spread apart and an officer making physical contact with him that resembled some kind of a search, but was unable to fully see it, and she did not see whether any of his pockets were entered. § 87(2)(b) did not make any observations of § 87(2)(b)'s interactions with officers on scene. § 87(2)(b) in an unverified telephone statement, reported observing § 87(2)(b) be frisked and have his pockets searched by an officer (BR 4, BR 5, BR 8).

Det. McHugh testified that he frisked § 87(2)(b)'s waistband while standing in the street area between the MTA bus and the curb, immediately after § 87(2)(b) exited from the bus. Det. McHugh explained that he conducted this frisk because the crime § 87(2)(b) was suspected of at that time was a knifepoint robbery. He stated that he did not perform any other searches on § 87(2)(b) from whom he then requested identification and filled out a Stop, Question, and Frisk Report, which reflects this same information (BR 11, BR 29).

§ 87(2)(g)

[REDACTED]

To frisk a person, an officer must have reasonable suspicion that the person is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) (BR 31). In order to perform a search, an officer must have probable cause to believe the person has committed a crime. People v. DeBour, 40 N.Y.2d 210 (1976)(BR 20).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation K – Abuse of Authority- Police Officer Fernando Gonzalez frisked § 87(2)(b)**

**Allegation L– Abuse of Authority – Police Officer Fernando Gonzalez frisked § 87(2)(b)**

§ 87(2)(b)

Contact with § 87(2)(b) was never successfully made, and as discussed, the identity of the fourth male passenger removed from the bus was never learned. Civilians on scene, however, reported witnessing PO Gonzalez interacting with § 87(2)(b) and the footage provided by § 87(2)(b) shows § 87(2)(b) standing against the wall with PO Gonzalez behind him.

Specifically, § 87(2)(b) witnessed an officer frisking § 87(2)(b) and the unidentified individual and searching both of their pockets. § 87(2)(b) reported in an unverified telephone statement that she observed § 87(2)(b) standing up against the wall with an officer who searched him in some manner, but was unable to see the exact extent of the search and/or whether § 87(2)(b)'s pockets were entered. § 87(2)(b) testified to observing § 87(2)(b) and the fourth male standing against the wall with their legs spread while officers searched both of them in some manner, but she could not observe the extent of that search. § 87(2)(b) who was standing near § 87(2)(b) during the stop, did not observe any officer frisk or search § 87(2)(b).

PO Gonzalez acknowledged interacting with § 87(2)(b) whom he came to know as § 87(2)(b) and a second individual whose name he never obtained. He did not specifically recall whether he frisked either of these individuals, but he stated that, based on the circumstances of the stop and the violent crime suspected, he was certain that he did frisk them.

To frisk a person, an officer must have reasonable suspicion that the person is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) (BR 31).

§ 87(2)(g)  
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§ 87(2)(g).

**Allegation M – Abuse of Authority – Police Officer Fernando Gonzalez searched § 87(2)(b)**

**Allegation N – Abuse of Authority – Police Officer Fernando Gonzalez searched § 87(2)(b)**

Although PO Gonzalez acknowledged that he likely frisked § 87(2)(b) and the fourth passenger, he denied searching either of their pockets. Among the civilians, only § 87(2)(b) reported observing an officer searching these two individuals' pockets.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g).

**Allegation O – Abuse of Authority – Police Officer Aida Demarinis interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) alleged that PO Demarinis told her to stop recording when she exited from the bus to film the officers. In her initial complaint narrative, § 87(2)(b) stated that PO Demarinis told her to get back onto the bus and stop recording. During a telephone statement on December 1, 2015, § 87(2)(b) stated that PO Demarinis's exact statement was, "Don't you have anything better to do than record?" followed by repeated instructions to get back onto the bus. She affirmed, during this telephone statement, that PO Demarinis did not explicitly tell her that she

could not record the incident. During her sworn statement, however, § 87(2)(b) testified that PO Demarinis's exact statement was, "Don't you have anything better to do than record? Stop recording. Get back on the bus or take a walk." (BR 32 and BR 4).



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The video footage shows PO Demarinis approaching § 87(2)(b) and making the following statements: "Miss? You got nothing else better to do, really? Go back on your bus and clear the scene, please. Get back on your bus or take a walk. Get back on the bus or take a walk. Okay? Then go back on your bus, sit down, and we'll have you on your way." Between 0:21-0:32 seconds on the above footage, § 87(2)(b) is heard continuing to converse with PO Demarinis, but additional background noise makes each of their statements inaudible during these seconds. ■

§ 87(2)(g)  
[Redacted text block]

§ 87(2)(g), § 87(4-b)  
[Redacted text block]

[Redacted text block]

[Redacted text block]

Squad: 15

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

